*** HON'BLE SRI JUSTICE V.V.S.RAO**

+ WRIT PETITION Nos.18505 and 18510 of 2006

%Dated 05-12-2006

Dr.G.Shiva Prasad Reddy and others.

… Petitioners.

VERSUS

$ The District Collector,
Visakhapatnam District, and others.

… Respondents.

! Counsel for Petitioners : Sri Vedula Srinivas.

^Counsel for Respondents: G.P for Revenue.

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>HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18505 and 18510 of 2006

Dated:05.12.2006

Between:

Dr.G.Shiva Prasad Reddy and others.

…Petitioner

and

The District Collector and others.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18505 and 18510 of 2006

COMMON ORDER:

The petitioner in the first Writ Petition filed the Writ Petition seeking a writ of mandamus declaring the proceedings dated 20.06.2006 of the second respondent as illegal and arbitrary. A consequential direction is also sought to the respondents not to refuse the registration of sale transactions. Be it noted, under the impugned order, the second respondent notified the fourth respondent a list of lands which are purportedly assigned lands situated in Nadigattu Village of Bheemunipatnam Mandal of Visakhapatnam District including land in Survey Nos.27 and 28. The transfer of assigned lands is prohibited under Section 5 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Prohibition Act'). A similar relief is sought in the other Writ Petition, and hence this common order.

The petitioners in these Writ Petitions have purchased land admeasuring about Acs.7.00 under registered sale deeds and agreements of sale from the previous owner. They approached the fourth respondent for ascertaining the value of the stamp duty payable on the sale deeds. They were informed that in view of Section 22-A of the Registration Act, 1908, as amended by the A.P.Amendment Act No.4 of 1999 and notification issued thereunder vide G.O.Ms.No.1004, dated 01.10.2003, the registration of lands in Survey Nos.27 and 28 of Nadigattu Village is prohibited. The petitioners then filed W.P.Nos.8415,

8447 and 8449 of 2006 before this Court seeking invalidation of Section 22-A of the Registration Act. These Writ Petitions were allowed on 25.04.2006. The petitioners then approached the fourth respondent for registration. They came to know about the impugned proceedings, whereunder registration is prohibited under Section 5 of the Prohibition Act.

The second respondent filed a common counter affidavit. It is stated that the land in Survey Nos.27 and 28 is classified as assessed waste dry (Banjaru and Gayalu) in the settlement enquiry taken up under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948, that the land was assigned to three persons after subdivision of land, that the assignees sold the land to Smt.Sarada Devi, and that the petitioners purchased the land in contravention of the provisions of the Prohibition Act. It is further stated that the District Collector issued orders on 31.01.2006 directing the Mandal Revenue Officers in the Districts to supply the updated list of assigned lands/Government lands to the concerned Registrars, pursuant to which, the second respondent issued impugned proceedings/letter, dated 20.06.2006.

It is contended by the learned Counsel for the petitioners that under the Registration Act power to prepare a list of assigned lands in respect of which registration is prohibited vests in the District Collector, and therefore, it is not competent for the second respondent to direct/advice the fourth respondent regarding the lands in respect of which, registration is prohibited. **Per contra**, the learned Assistant Government Pleader for Revenue (General-A) submits that Rule 4 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 (for short 'the Prohibition Rules'), enables the District Collector to delegate the power under Section 5 of the Prohibition Act, and therefore, the impugned letter issued by the second respondent to the fourth respondent is valid. He placed considerable emphasis on the letter of the District Collector bearing Rc.No.304/2006/E1, dated 31.01.2006, in support of the contention.

In the counter affidavit, the purchase of the land by the petitioners from Sarada Devi is not denied. It is also not denied that Section 22-A of the Registration Act as amended by the A.P.Legislature as well as the notification vide G.O.Ms.No.1004, dated 01.10.2003, were declared *ultra vires* by the Court. After disposal of all the Writ Petitions on 25.04.2006, the second respondent issued the impugned letter on 20.06.2006. Prior

thereto, the District Collector or the second respondent did not send any advisory note to the Registering Authority including the list of assigned lands situated at Nadigattu Village. These are admitted. The question that needs to be considered is whether it is competent for the second respondent to include the assigned lands in the list of assigned lands in respect of which, registration is prohibited notwithstanding the Registration Act?

The controversy needs to be resolved by referring to Sections 4 and 5 of the Prohibition Act and Rule 4 of the prohibition Rules.

Sections 4 and 5 of the Prohibition Act read as under.

> **4. Consequences of breach of provisions of Section 3:-**
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> (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order-
>
> (a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and
>
> (b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor persons in accordance with the rules for the time being in force;
>
> Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.
>
> (2) omitted
>
> (3) omitted
>
> **5. Prohibition of registration of assigned lands:-**
>
> Notwithstanding anything in the Registration Act, 1908 (C.A.16 of 1908) on or after the commencement of this Act, no registering officer shall accept for registration any document relating to the transfer of, or the creation of any interest in, any assigned land included in a list of assigned lands in the district which shall be prepared by the District Collector and furnished to the registering officer except after obtaining prior permission of the District Collector concerned for such registration.

Rule 4 of the Prohibition Rules reads as under.

> **4. Communication of list of assigned lands to the**

Registration Department.

The District Collector or the authorized officer shall as soon as an order passed assigning land to landless poor persons furnish a copy of the order to the Registration Department so as to prevent the Department from registering any document relating to the transfer of such lands.

There is patent difference in the language employed in both Sections 4 and 5 of the Prohibition Act. Section 4 of the Prohibition Act as amended by the A.P.Amendment Act 32 of 1989 is to the effect that the District Collector or any other Officer not below the rank of Mandal Revenue Officer authorized by District Collector to take possession of the assigned land for contravention of Section 3 of the Prohibition Act[1]. In other words, the Mandal Revenue Officer authorized by the District Collector has coequal jurisdiction along with the District Collector to render the transfer of assigned land void and then resume/take possession of such land. The term "authorized" is not defined in the parent statute.

In exercise of their powers under Section 9(1) of the Prohibition Act, the Government promulgated the Prohibition Rules. Rule 2(b) of the Prohibition Rules defines "authorized officer" means the officer authorized by the District Collector under sub-section (1) of Section 4 of the Prohibition Act. Rule 4 of the Prohibition Rules refers to the District Collector or authorized officer, and obliges them to send a copy of the order assigning land to landless poor persons to the Registration Department so as to prevent its officers from entertaining registrations. Therefore, there cannot be any doubt that the power to resume land under Section 4 of the Prohibition Act inheres in the District Collector as well as the Mandal Revenue Officer and both of them are required under Rule 4 of the Prohibition Rules to furnish a copy of the assignment order to the Registering Authority. Whether this dispensation, that is to say, delegation of power by the District Collector to the Mandal Revenue Officer, is also in relation to Section 5 of the Prohibition Act, is the corollary query.

Section 5 of the Prohibition Act contains *non obstante* clause. It renders Registration Act inapplicable to the assigned lands. No Registering Officer can accept registration of any documents relating to transfer of assigned land, provided, such assigned land is included in the list of assigned lands in the Districts prepared by the District Collectors. Here again, clearly, the power is vested only in the District Collector and

the power to delegate to any authorized officer is very conspicuous by its absence. Indeed, Rule 4 of the Prohibition Rules, on which abundant emphasis is laid, refers to only the duty of the assigning officer to send a copy of the assignment order to the Registration Department, and it does not in any manner amounts to District Collector delegating the power under Section 5 of the Prohibition Act to the "authorized officer". Therefore, in the absence of specific Legislative sanction; authorizing the delegatee to further delegate the letter of the District Collector dated 31.01.2006 advising all the Mandal Revenue Officers in the Districts to supply updated list of assigned lands is *ultra vires* the power of the District Collector under Section 5 of the Prohibition Act. On this ground alone, the impugned letter/proceedings of the Mandal Revenue Officer should suffer from incurable infirmity. However, it is always open to the District Collector to send/notify the list of assigned lands to the Registering Officers in the District and continue to update such list. This Court also hastens to add that having regard to the purpose for which the Legislation was made, and also having regard to Rule 4 of the Prohibition Rules, if the Mandal Revenue Officer sends a copy of the assignment order to the Registering Officer, the Registering Officer should prevent registration of any document relating to transfer of assigned lands.

The Writ Petitions, subject to the above observations, are accordingly allowed. The impugned letter is set aside. As and when the petitioners submit documents for registration, the Registering Authority should examine them in accordance with the provisions of the Registration Act and also in tune with the observations made hereinabove. There shall be no order as to costs.

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(V.V.S.RAO, J)

05.12.2006

Note: L.R Copy to be marked.

B/o.

vs

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[1] Section 3(1) of the Prohibition Act prohibits the transfer of assigned land by way of purchase, gift, lease, mortgage and exchange or otherwise.